

**Attorney Docket No.: FUJA 20.933 (100794-00551)**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventor: Matsoharu Usumi  
Confirmation No.: 3778  
Serial No.: 10/771,937  
Filed: February 4, 2004  
Title: Content Delivery System  
Examiner: Jalatee Worjloh  
Group Art Unit: 3621

September 5, 2007

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF CONFERENCE REQUEST**

SIR:

Submitted herewith is a Notice of Appeal and a Petition for two-month extension of time, extending the period for filing a Notice of Appeal in the above-identified application until September 6, 2007.

## **REMARKS**

Applicants request review of the final rejection of April 16, 2007, prior to the filing of their Appeal Brief.

Claims 1-10 are currently pending in this application. The Examiner is thanked for indicating that the amendment to claim 5 included in the Amendment under 37 C.F.R. § 1.116, filed July 3, 2007, has been entered for purposes of this appeal.

### **Rejection on the Merits**

The office action rejects claims 1-4, 6-8 and 10 under 35 U.S.C. § 103(a) as unpatentable over Japanese Patent No. 200027030 to Kei in view of U.S. Patent No. 6,199,054 to Khan.

Claims 5 and 9 are rejected under 35 U.S.C. § 103(a) as unpatentable over Kei in view of Khan and in further view of U.S. Published Patent Application No. 2002/0128936 to Sako.

A primary distinguishing feature of the instant claims over the relied upon portions of the cited references is that the “the billing is set based on the **quality of the delivered monitored data stream**.” In both the cited references the billing rates are based on other factors, and not the quality of the data stream that is monitored and delivered.

With respect to independent claims 1 and 2 it is respectfully submitted that in Khan it is the user (ISP) that must set the billing rate and not the monitoring device as recited in the instant claims. Further, it is uncertain that Khan is even applicable to the instant application as it fails to provide any teaching of a Quality of Service or billing based thereon. As best understood, Khan teaches merely a simple system for billing email but makes no specific mention as to how billing rates are determined other than by the ISP, these billing rates being largely based on the security

of the transmission. All that is said is that the ISP may set the billing rates to be fair. Thus as best understood, Khan stands for little more than the concept of billing rates based on security.

In contrast, the instant invention as recited in claims 1 and 2, the billing is set based on the quality of the delivered monitored data stream at the subscriber serving apparatus. Khan does not teach or suggest such a system.

With respect to the rejection of claims 5 and 9 citing Sako, it is respectfully submitted that the billing table described therein is different from the instantly claimed table. In Sako billing is carried out based on a value standard for the provided information (see para. [0006]). The value standard is described as a high or low value for using information which is distinguished by quality and class. (see para. [0021]). Thus, the billing rate is previously determined based on the level of compression, for example, and are irrelevant to the quality of the **delivered monitored data stream**. In contrast, the amount of billing in claims 5 and 9 is determined based on the quality of the monitored data stream and the billing parameter being associated with the delivery quality of the monitored data as shown in Figs. 7 and 9.

### **In the Advisory Action**

The Advisory Action alleges that the features upon which reliance is placed to distinguish over the cited references are not found in the claims. Namely, advisory action alleges that applicants have relied upon “a monitoring device setting the billing rate” to distinguish over the Khan. This is incorrect. Rather, it was stated that in the instantly claimed invention “the billing is set based on the quality of the delivered monitored data stream at the subscriber serving apparatus.” (Amendment After Final, p. 6) Indeed, this same argument is presented again

herein, as for example, claim 1 recites:

the subscriber serving apparatus includes **monitoring means for monitoring a data stream** being delivered from the delivery server to the user terminal, and  
the billing server includes **judging means for judging the amount of billing to be charged to a user based on delivery quality of the monitored data stream** at the subscriber serving apparatus, and bills the user based on the result of the judgment made by the judging means.

Thus it is submitted, that the Advisory Action inaccurately summarizes the arguments presented in response to the Final Office Action, and that the actual argument is supported by the recitations in the claims.

Next, with respect to paragraph (2) of the Advisory Action, it is submitted, contrary to the assertion by the Examiner that claim 12 does not include a determination of a price using quality of delivery as a factor. Indeed, once again, claim 12 of Khan teaches the determination of price prior to transmission, thus the quality of delivery cannot possibly be one of the factors in determining the price, as recited in the current claims where it is stated that “the billing is set based on the quality of the **delivered monitored data stream**.” Accordingly, claim 12 of Khan does not teach determination of price based on the quality of delivery service.

Finally, with respect to Sako, while level of compression may well be a form of quality, there is nothing in the reference that describes quality of the delivered monitored data stream. Compression as described in Sako is a parameter set in advance of transmission and not part of the quality of the delivered monitored data stream.

Based on the foregoing, it is submitted that independent claims 1 and 2 patentably

distinguish over the relied upon portions of Kei and Khan and are allowable. Further it is submitted that the relied upon portions of Sako do not address these shortcomings. Accordingly, claims 1 and 2 patentably distinguish over the relied upon portions of the cited references and are allowable. Claims 3-10, which depend from one of these allowable base claims are allowable therewith.

In view of the remarks set forth above, this application is in condition for allowance which action is respectfully requested.

Any fee due with this paper may be charged to Deposit Account No. 50-1290.

Respectfully submitted,

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